

UNITED STATES DISTRICT COURT  
OF THE DISTRICT OF MASSACHUSETTS

C.A. NO. 04-11971-GAO

\*\*\*\*\*

JANET M. BUTLER, \*  
Plaintiff, \*

V. \*

MARK S. BEATON, Individually \*  
and in his capacity as a Member of \*  
the BOARD OF SELECTMEN OF \*  
THE TOWN OF KINGSTON, \*  
PAUL M. GALLAGHER, OLAVO \*  
B. DEMACEDO, JOSEPH D. \*  
KELLEHER, RICHARD E. \*  
KENNEY in their capacities as \*  
Members of the BOARD OF \*  
SELECTMEN OF THE TOWN OF \*  
KINGSTON and TOWN \*  
OF KINGSTON, \*  
Defendants. \*

\*\*\*\*\*

MOTION FOR AN EXPEDITED HEARING  
ON PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

NOW COMES the plaintiff, Janet M. Butler, and hereby moves this Honorable  
Court grant her an expedited hearing on her Motion for a Preliminary Injunction.

AS GROUNDS THEREFORE the plaintiff, Janet M. Butler, by her counsel,  
states as follows:

1. The plaintiff, Janet M. Butler, commenced this case in Plymouth Superior Court  
on September 1, 2004 challenging the August 24, 2004 decision of the Kingston Board of

Selectmen removing her from her position as an alternate member of the Kingston Zoning Board of Appeals.

2. On September 2, 2004, it became apparent that the Kingston Board of Selectmen, intended to fill the vacancies on the Board of Appeals at its next public meeting which was scheduled for Tuesday, September 7, 2004. As a result thereof, the plaintiff, Janet M. Butler, through counsel filed a Motion for a Short Order of Notice and Motion for a Preliminary Injunction on Thursday, September 3, 2004. After consideration on September 3, 2004, the Court ordered that the plaintiff and defendants appear for an expedited hearing on the plaintiff's Motion for a Preliminary Injunction on Tuesday, September 7, 2004 at 9:00AM in Plymouth Superior Court. See attached Order of Notice and Ruling on Short Order of Notice attached as Exhibit A

3. Prior to the hearing on Monday, September 6<sup>th</sup>, then counsel for the Town of Kingston, Elizabeth Lane, Esq., of Kopelman & Paige, PC, offered in exchange for a one week continuance of the hearing until September 14, 2004 to agree on behalf of the Board of Selectmen to postpone any effort to fill the position from which the plaintiff, Butler, was removed.

4. Based on this representation, the plaintiff, Butler, through counsel agreed to continue the matter for one week until September 14, 2004. Notice of this continuance was provided as directed to Attorney Mark Reich as directed by Elizabeth Lane, Esq.

5. On or about Wednesday, September 8<sup>th</sup>, plaintiff's counsel spoke with Attorney Mark Reich who confirmed the substance of the agreement and indicated that he was in contact with the Selectmen and/or Town Administrator concerning these matters.

6. On Thursday, September 9<sup>th</sup>, plaintiff's counsel received a telephone call from Attorney Thomas Campbell of the firm of Brody, Hardoon, Kesten, et al., indicating that his firm had been retained as counsel for the Kingston Selectmen. Attorney Campbell indicated he was aware of the preliminary injunction hearing although he was just learning about the case and indicated that he believed that they would be removing the matter from state court to federal court prior to the hearing on Tuesday, September 14, 2004. Attorney Campbell further indicated that he would not oppose a request to expedite the scheduling of a hearing on the plaintiff's Motion for a Preliminary Injunction if the matter was removed.

7. On Friday, September 10<sup>th</sup>, plaintiff's counsel received fax notice of the removal without a cover sheet or without any documents indicating what had been filed in the United States District Court. See Exhibit B.

8. On Monday, September 13, 2004, plaintiff's counsel received a copy of the filing in the United States District Court. The filing did not include the Order of Notice which had issued in the Plymouth Superior Court concerning the expedited hearing on the Motion for a Preliminary Injunction, a copy of the Motion for a Preliminary

Injunction or the letter from counsel agreeing to postpone the hearing for one week which was requested by the plaintiff. See Exhibit C.

9. The Kingston Board of Selectmen intend to meet on Tuesday, September 21, 2004 and have indicated publicly that they might fill the alternate position from which they removed the plaintiff at this meeting. As of September 13, 2004, defendant's counsel, Thomas Campbell, agreed to ask his client to agree not to appoint a successor pending the ability to be heard on the Motion for a Preliminary Injunction; however, there is no court order precluding action by the Selectmen.

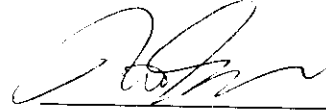
10. An expedited hearing right was previously ordered by the Plymouth Superior Court and is necessary to prevent the defendant, Selectmen, from taking action which will fill the position pending a further hearing.

11. As set forth in the motion and accompanying memorandum there is a substantial likelihood that the plaintiff will suffer a loss of rights which cannot be recovered unless there is preliminary injunctive relief.

WHEREFORE the plaintiff, Janet M. Butler, requests that this Court schedule a hearing on the plaintiff's Motion for a Preliminary Injunction on or before Tuesday, September 21, 2004 prior to the Selectmen's meeting to consider the request for injunctive relief.

Respectfully Submitted  
Janet M. Butler  
By her Counsel,

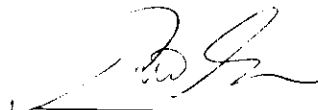
DATED: 13-Sep-04



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(781) 934-5678

### CERTIFICATE OF SERVICE

I, Robert W. Galvin, Esq., hereby certify that I have served a true copy of the  
aforementioned Motion for an Expedited Hearing upon counsel of record for the  
defendants, Thomas P. Campbell, Esq., Brody, Hardoon, Perkins & Kesten, LLP, One  
Exeter Plaza, Boston, MA 02116 by hand-delivery and first class mail, postage prepaid  
this 14<sup>th</sup> day of September 2004.



Robert W. Galvin